

SENATE BILL NO. 114

INTRODUCED BY G. HINKLE

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A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING ARRESTS, SEARCHES, AND SEIZURES BY FEDERAL EMPLOYEES; PROVIDING THAT FEDERAL EMPLOYEES MUST OBTAIN THE COUNTY SHERIFF'S PERMISSION TO ARREST, SEARCH, AND SEIZE; PROVIDING EXCEPTIONS; PROVIDING FOR PROSECUTION OF FEDERAL EMPLOYEES VIOLATING THIS ACT; REJECTING FEDERAL LAWS PURPORTING TO GIVE FEDERAL EMPLOYEES THE AUTHORITY OF A COUNTY SHERIFF IN THIS STATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** It is the intent of the legislature:

- (1) to ensure maximum cooperation between federal employees and local law enforcement authorities;
- (2) to ensure that federal employees who carry out arrests, searches, and seizures in this state receive the best local knowledge and expertise available; and
- (3) to prevent misadventure affecting Montana citizens and their rights that results from lack of cooperation or communication between federal employees operating in Montana and local law enforcement authorities.

NEW SECTION. **Section 2. County sheriff's permission for federal arrests, searches, and seizures**

**-- exceptions.** (1) A federal employee who is not designated by Montana law as a Montana peace officer may not make an arrest, search, or seizure in this state without the written permission of the sheriff or designee of the sheriff of the county in which the arrest, search, or seizure will occur unless:

- (a) the arrest, search, or seizure will take place on a federal enclave for which jurisdiction has been actively ceded to the United States of America by a Montana statute;
- (b) the federal employee witnesses the commission of a crime the nature of which requires an immediate arrest;
- (c) the arrest, search, or seizure is under the provisions of 46-6-411 or 46-6-412;
- (d) the intended subject of the arrest, search, or seizure is an employee of the sheriff's office or is an



1 elected county or state officer; or

2 (e) the federal employee has probable cause to believe that the subject of the arrest, search, or seizure  
3 has close connections with the sheriff, which connections are likely to result in the subject being informed of the  
4 impending arrest, search, or seizure.

5 (2) The county sheriff or designee of the sheriff may refuse permission for any reason that the sheriff or  
6 designee considers sufficient.

7 (3) A federal employee who desires to exercise an exception under subsection (1)(d) shall obtain the  
8 written permission of the Montana attorney general for the arrest, search, or seizure unless the resulting delay  
9 in obtaining the permission would probably cause serious harm to one or more individuals or to a community or  
10 would probably allow time for flight of the subject of the arrest, search, or seizure in order to avoid prosecution.  
11 The attorney general may refuse the permission for any reason that the attorney general considers sufficient.

12 (4) A federal employee who desires to exercise an exception under subsection (1)(e) shall obtain the  
13 written permission of the Montana attorney general. The request for permission must include a written statement,  
14 under oath, describing the federal employee's probable cause. The attorney general may refuse the request for  
15 any reason that the attorney general considers sufficient.

16 (5) (a) A permission request to the county sheriff or Montana attorney general must contain:

17 (i) the name of the subject of the arrest, search, or seizure;

18 (ii) a clear statement of probable cause for the arrest, search, or seizure or a federal arrest, search, or  
19 seizure warrant that contains a clear statement of probable cause;

20 (iii) a description of the specific things to be searched for or seized;

21 (iv) a statement of the date and time that the arrest, search, or seizure is to occur; and

22 (v) the address or location where the intended arrest, search, or seizure will be attempted.

23 (b) The request may be in letter form, either typed or handwritten, but must be countersigned with the  
24 original signature of the county sheriff or designee of the sheriff or by the Montana attorney general to constitute  
25 valid permission. The permission is valid for 48 hours after it is signed. The sheriff or attorney general shall keep  
26 a copy of the permission request on file.

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28 **NEW SECTION. Section 3. Remedies.** (1) An arrest, search, or seizure or attempted arrest, search,  
29 or seizure in violation of [section 2] is unlawful, and the persons involved must be prosecuted by the county  
30 attorney for kidnapping if an arrest or attempted arrest occurred, for trespass if a search or attempted search

1 occurred, for theft if a seizure or attempted seizure occurred, and for any applicable homicide offense if loss of  
2 life occurred. The persons involved must also be charged with any other applicable criminal offense in Title 45.

3 (2) To the extent possible, the victims' rights provisions of Title 46 must be extended to the victim or  
4 victims by the persons and entities involved in a prosecution.

5 (3) The county attorney shall prosecute once a claim of violation of [section 2] has been made by the  
6 county sheriff or designee of the sheriff, and failure to prosecute subjects the county attorney to recall by the  
7 voters and to prosecution by the attorney general for official misconduct.

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9 **NEW SECTION. Section 4. Invalid federal laws.** Pursuant to the 10th amendment to the United States  
10 constitution and this state's compact with the other states, the legislature declares that any federal law purporting  
11 to give federal employees the authority of a county sheriff in this state is not recognized by and is specifically  
12 rejected by this state and is declared to be invalid in this state.

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14 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified  
15 as an integral part of Title 44, and the provisions of Title 44 apply to [sections 1 through 4].

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17 **NEW SECTION. Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
18 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
19 remains in effect in all valid applications that are severable from the invalid applications.

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21 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

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